why a moneylender should await till 3 days before the expiry of the 6 years' period of limitation particularly in the case of an unsecured borrower before instituting his action, unless some repayment had been made. On the authority, if any was needed, of *Gulwant Singh* v. *Abdul Khalik*[1] the claim was for this reason also unenforceable.

Counsel for the defendant further relied on the fact that the accounts of the moneylender in respect of this transaction referred to one Ang Gee Aik. Since the name of the defendant was Ang Gee Bok, which was also the name appearing in the pro-note, he submitted that the accounts produced did not refer to this transaction and that consequently no accounts had been kept, so that the transaction by this breach of section 18 of the Moneylenders Ordinance became unenforceable. As I understood him, the basis of his submission was that there was no presumption available to the plaintiff of due and proper compliance on his part with the law regarding moneylending and the plaintiff must therefore prove by positive evidence that he had fully complied with the requirements of law before he could enforce the repayment of the loan. Despite the submission of counsel for the plaintiff that since the addresses were the same, the names must be the same, it seemed to me, that the word "Aik" was so patently different from "Bok" that it could not be suggestive of an error in transcript. There was, in my judgment, a certain force in the submission of counsel for the defendant, but in view of my previous finding, there was no necessity for me to decide on this, though it did appear to me to be a substantiation of the allegation of the defendant that he was lent not $4,000 but $400 only.

I accordingly dismissed the claim with costs.

Claim dismissed.

Solicitors: *Gurdev Singh & Co.; Lim Boon Seng.*

KWONG LING v. THE COMMISSIONER OF THE FEDERAL CAPITAL OF KUALA LUMPUR

[A.Cr.J. (Abdul Hamid J.) August 22, 1970]
[Kuala Lumpur — Criminal Appeal No. 15 of 1970]

Local Government — Nuisance notice — Default in compliance with requisitions of — Abatement order — Municipal Ordinance (S.S. Cap. 133), ss. 246 and 247.

The Commissioner made a complaint against the appellant for default in complying with the requisitions of a nuisance notice issued under section 246 of the Municipal Ordinance. The appellant was summoned to answer a charge for failing to comply with such notice under section 246 (6) (b) of the Ordinance and on his plea of guilty was fined $25. Subsequently the magistrate issued a notice to the appellant to show cause why an abatement order requiring compliance with all the requisitions of the nuisance notice should not be made against him. After hearing the appellant the learned magistrate decided that it was proper that the order be made. On appeal,

Held, dismissing the appeal: (1) in the particular circumstances of the case the learned magistrate had not erred in law when he found that this was a fit and proper case for making an abatement order;

(2) the proceedings which preceded the making of such order were in form and substance part of the proceedings for default. An abatement order made after conviction of the appellant was perfectly regular.

Case referred to:-

(1) *Re Chung Lit and Chung Ah Kam* [1952] M.L.J. 123.

MAGISTRATE'S CRIMINAL APPEAL.

Kwok Yoke How for the appellant.

Ajaib Singh (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Abdul Hamid J.: This is an appeal against an abatement order issued by the learned magistrate Kuala Lumpur to the appellant on 14th February 1970.

A complaint was made by Pesurohjaya Ibu Kota* Kuala Lumpur on 17th September 1968 against the appellant for default in complying with the requisitions of a nuisance notice issued under section 246 of the Municipal Ordinance. The appellant was summoned to answer a charge for failing to comply with such notice under section 246(6)(b) of the said Ordinance. The appellant pleaded guilty and was fined $25. Subsequently the magistrate issued a notice to the appellant to show cause why an abatement order requiring compliance with all the requisitions of the nuisance notice should not be made against him. After hearing the appellant the learned magistrate decided that it was proper that the order be made.

The appellant now appeals. The two main grounds of appeal are as follows —

"(a) The learned magistrate erred in law in holding in his grounds of judgment that as the question of a closing order did not arise in the summons it was not proper for him to grant a closing order.

(b) The learned magistrate was wrong and had no jurisdiction to issue the notice requiring your petitioner to show cause why an abatement order should not be made as section 247 of the Municipal Ordinance (Cap. 133) provided that a summons under that section should be in Form G of Schedule A of the said Ordinance."

It is revealed from the record that the appellant urged the court below to issue a closing order instead of the abatement order. The learned magistrate however felt that primarily the hearing of the summons was to determine whether or not the appellant could show cause against the issue of the abatement order. He concluded that a closing order did not arise at all in the summons. He expressed the view that as far as the Municipality was concerned the building was still fit for human habitation.

The appellant argued that this was against the weight of evidence. It was submitted that the architect (D.W. 3) had given evidence to the effect that the building was in advanced state of dilapidation and was unfit for human habitation. On examining the evidence of D.W. 3 I am unable to find any evidence to that effect. What D.W. 3 said was that he advised the

* The Commissioner of the Federal Capital.

appellant against repairs of the existing building in view of the extensive repair which will be involved. After inspecting the building he felt that not only a certain portion of the building required repair but also other portions of the building. He stated that all the repairs required by the Municipality were necessary. He further testified that the present condition of the building was unsafe and risky to the tenants of the premises. In his report (D. 2) he expressed the opinion that repairs required by the Municipality amount to a total reconstruction of the premises. Considering the evidence that the learned magistrate had before him I think he was justified in arriving at the conclusion that primarily what he had to consider was whether or not the abatement order should be made and had properly found that there was ample evidence to show that the repairs required by the Municipality were necessary to abate the nuisance. In the particular circumstances of this case I am of the opinion that the learned magistrate had not erred in law when he found that this was a fit and proper case for making an abatement order.

As regards the second ground I am of the opinion that the proceedings which preceded the making of the abatement order were not wrong in law. In *Re Chung Lit and Chung Ah Kam*,[1] a case cited before me, it was apparent that a summary abatement order was made after the landlord of the premises was found guilty of default to comply with the nuisance notice under section 246 of the Municipal Ordinance. The power to make such summary order is I think clearly provided under section 247 of the Municipal Ordinance. It seems to me that pursuant to that section the magistrate was empowered to make a summary abatement order against any person who is convicted on a summons for default of a nuisance notice on complaint made by the commissioners or pursuant to a separate application by the commissioners for an abatement order under section 246. Whilst sub-section (15) of section 247 provides that a summons under that section may be in Form G in Schedule A it does however allow that variations be made as the circumstances require. In the present case the complaint, the summons for default of nuisance notice and the fact of the conviction for such default was already before the court and it was therefore proper for the learned magistrate after notifying the appellant of his intention to make such order to proceed making a summary abatement order after hearing the evidence, if any, which may be adduced to show cause why such order should not be made. The proceedings which preceded the making of such order in the instant case were in form and substance part of the proceedings for default. In my opinion an abatement order made after conviction of the appellant in that proceedings was perfectly regular. Further I am of the opinion that there is nothing to prevent the learned magistrate from proceeding summarily to make an abatement order on conviction of the appellant even without notice. The fact that a notice was issued has not I think provided a valid ground for saying that the proceedings were wrong in law. For this reason, I find that the learned magistrate did properly exercise his summary power provided by law under section 247 of the Municipal Ordinance when he made the abatement order.

The appeal is therefore dismissed.

Appeal dismissed.

Solicitors: *Skrine & Co.*

KIAN ANN & CO. v. MALAYAN RAILWAY ADMINISTRATION

[O.C.J. (Ibrahim J.) September 6, 1970]

[Kota Bharu — Civil Suit No. 57 of 1967]

Carriers — Railways — Carriage of goods — Goods transported at owner's risk — Goods of perishable nature — Wilful misconduct — What constitutes.

Railways — Carriers — Goods transported at owner's risk — Railway Ordinance, 1948, s. 67(2).

This was a claim for damages arising from the delay in the delivery of a consignment of onions transported by the defendant's train. The consignment was at owner's risk and the agreed issue was whether there was wilful misconduct on the part of the defendants or their servants. The plaintiff alleged that there was wilful misconduct in that the defendants or their servants forwarded the consignment from Taiping by a slow goods train, knowing that it contained onions which were goods of a perishable nature. The onions when delivered were found to be in a rotten state.

Held: in the surrounding circumstances of this case, wilful misconduct had been proved against the defendant's servant at Taiping when he forwarded the consignment containing the onions by a slow goods train. When he did so he had acted recklessly, quite regardless of whether the onions would rot or not.

Cases referred to:-

(1) *Lewis* v. *Great Western Rly. Co.* (1877-8) 3 Q.B.D. 195.

(2) *Forder* v. *Great Western Rly. Co.* [1905] 2 K.B. 532.

(3) *H.C. Smith Ltd.* v. *Great Western Rly. Co.* [1922] 1 A.C. 178.

CIVIL SUIT.

A. Wilson for the plaintiffs.

J. Puthucheary for the defendants.

Cur Adv. Vult.

Ibrahim J.: The plaintiffs' claim against the defendants in this action is for damages arising from the delay in the delivery of a consignment of onions transported by the defendants' train in CG 4243. The consignment was "at owner's risk" and the agreed issue is whether there was wilful misconduct on the part of the defendants or their servants for regulation 30(b) of the Malayan Railway Administration Tariff Book Chapter II which substantially reproduces section 67(2) of the Railway Ordinance No. 8 of 1948 provides that:

"If, ... goods are agreed to be conveyed at owner's risk, the Railway Administration shall not be liable for loss, damage, deviation, misdelivery, delay or detention thereof except upon proof that the same arose from the wilful misconduct of the Railway Administration or its servants."

Several particulars of misconduct were alleged in the plaintiffs' statement of claim but at the hearing the plaintiffs confined themselves to only one, *i.e.*, "forwarding the said CG 4243 from Taiping station by a slow goods train, knowing that it contained onions which were goods of perishable nature."